IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 13 of 1997
In
SPECIAL CIVIL APPLICATION No. 10357 of 1996

For Approval and Signature:
HONOURABLE MR.JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE M.C.PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G S R T C - Appellant(s)

Versus

RAMILABEN WIDOW OF R.S.KHARWA - Respondent(s)

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Appearance :MR HS MUNSHAW for Appellant(s) : 1,
MR JS BRAHMBHATT for Respondent(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4

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CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA
and
HONOURABLE MR.JUSTICE M.C.PATEL

Date : 10/02/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)

Heard learned Counsel for the parties.

Shri Ramanlal S. Kharwa was working as Mechanic in Nadiad Division with the appellant – Corporation. For remaining absent from duty without informing the Authority or without obtaining prior permission his services were terminated, after regular Departmental

Inquiry, on 15.7.1981. After a period of 7 years i.e in 1988 a Reference was made i.e. Reference (LCN) No. 175/88 before the Labour Court, Nadiad, which was partly allowed by the Labour Court by its impugned Judgment and Award dated 27.12.1995 whereby the termination was held to be illegal and, therefore, reinstatement in service was ordered with 50% back-wages from the date of Reference i.e. 13.4.1988, instead of order of dismissal dated 15.7.1981. It was challenged before this Court by way of writ petition i.e. Special Civil Application No.10357/96 by the appellant – petitioner, but the said writ petition was dismissed on 19.12.1996 by the learned Single Judge. Hence, this Appeal.

During the pendency and final disposal of this Appeal the workman – original respondent died, therefore, his Legal representatives have come on record.

Once the workman has died, in whose favour the order of reinstatement was passed, then there is no question of considering the order of reinstatement passed by the Labour Court, not interfered by the learned Single Judge in writ petition. The only question remains to be decided regarding 50 % back-wages awarded by the Labour Court to the workman. The Labour Court awarded back-wages in view of the Judgment of this Court. But, recently the Hon'ble Supreme Court has held that a person who remained unauthorizedly absent cannot be awarded full back-wages or half applying the principles of “no work no pay”, the impugned Judgment and Award passed by the Labour Court, awarding 50 % back-wages to the workman, not interfered by the learned Single Judge in writ petition, is required to be quashed and set aside.

Accordingly, this Appeal is partly allowed and the

impugned Judgment and order passed by the Labour Court, awarding 50% back-wages to the workman, while setting aside the termination order, is hereby quashed and set aside by accepting the writ petition i.e. Special Civil Application No.10357 of 1996 to that extent only. Accordingly, the order passed by the learned Single Judge dismissing the writ petition on the point of 50 % back-wages is quashed and set aside and it is held that the respondents are not entitled for 50 % back-wages awarded to the workman by the Labour Court, while ordering the reinstatement. The Appeal is allowed accordingly. No order as to costs.

(B.J.SHETHNA,J.)

(M.C.PATEL, J.)

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